

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v.

ORDER

Crim. No. 03-414 (MJD/JGL)

Barry Mitchell Page,

Defendant.

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The above-entitled matter comes before the Court upon the Defendant's motions to Vacate Judgment and Dismiss the Indictment and for a Determination of his Present Mental Condition.

The Defendant moves to vacate the judgment and dismiss the Indictment. The basis for this motion is that the Indictment did not charge an offense under 18 U.S.C. § 921(a)(6). This was also the basis of an earlier motion, which was denied by this Court in its Order dated June 27, 2005. For the reasons stated in said Order, the instant motion must also be denied.

The Defendant has also moved for a determination of his present mental condition pursuant to 18 U.S.C. §§ 4244 and 4247. Section 4244(a) provides that a defendant found guilty of an offense may, within ten days after the defendant is found guilty, file a motion for a hearing on the

present mental condition of the defendant if the motion is supported by substantial information indicating that the defendant may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody and care or treatment in a suitable facility.

First, the Court notes that the Defendant's motion is not timely, as it was filed more than six months after the jury verdict. Second, the motion is not supported by substantial information indicating that the Defendant may be presently suffering from a mental disease or defect. The only report submitted with the Defendant's motion is one created when he was sixteen years old. As the Defendant is now 48 years old, the Court finds such report has no relevance to his present mental condition.

IT IS HEREBY ORDERED that the Defendant's Motions to Vacate Judgment and to Dismiss the Indictment [Doc. Nos. 152 and 153] and his Motion for Determination of Present Mental Condition [Doc. No. 157] are DENIED.

Date: October 3, 2005

s/ Michael J. Davis  
Michael J. Davis  
United States District Court